



## **ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R05-OW-2016; FRL-9945-18-Region 5]

### **Change in Public Notice Procedures for EPA Region 5's Proposed Establishment of TMDLs and Proposed Impaired Waters Listings under Section 303(d) of the Clean Water Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of change in public notice procedures.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 5 is announcing a change to its procedures for issuing public notices seeking comment when the Region proposes to list impaired waters after disapproving or partially disapproving a state's list of impaired waters (303(d) list) under Clean Water Act (CWA) Section 303(d), or the Region proposes to establish a total maximum daily load (TMDL) under CWA Section 303(d). For any future proposed action to include waters on a state's 303(d) list or establish a TMDL, EPA Region 5 will provide public notice on the 303(d)/TMDL Program Webpage (<http://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>) rather than by publication in the Federal Register.

**DATES:** This change in procedures will be effective on **[insert date of publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Vilma Rivera-Carrero at (312) 886-7795 or by e-mail at [rivera-carrero.vilma@epa.gov](mailto:rivera-carrero.vilma@epa.gov); or Donna Keclik at (312) 886-6766 or by e-mail at [keclik.donna@epa.gov](mailto:keclik.donna@epa.gov).

**SUPPLEMENTARY INFORMATION:** This notice announces a change in procedures by which EPA Region 5 issues public notices seeking comment under 40 CFR 130.7(d)(2) for its

proposed listing of impaired waters where the Region disapproves a state's 303(d) list, or proposes to establish TMDLs.

Under Section 303(d)(1)(A) of the CWA, each state is required to identify and prioritize the waters within its boundaries for which technology-based effluent limitations and other required controls are not stringent enough to achieve the applicable water quality standards. *See also* 40 CFR 130.7(b)(1). Each state must submit biennially a 303(d) list to the EPA Regional Administrator for review and approval. *See* 40 CFR 130.7(d)(1). Within 30 days of a state's submission, EPA must approve or disapprove the state's list. If EPA disapproves the state's 303(d) list, it must identify the impaired waters that should be listed within 30 days from the date of disapproval. EPA regulations provide that the Regional Administrator must promptly issue a public notice seeking comment on EPA's listing decision. After considering public comment and making appropriate revisions, the Region is required to transmit the list to the state. *See* 40 CFR 130.7(d)(2).

Under Section 303(d)(1)(C) of the CWA, each state is required to establish TMDLs for 303(d) listed waters. *See also* 40 CFR 130.7(c)(1). After a state develops a TMDL, the state must submit the TMDL to EPA for review and approval. *See* 40 CFR 130.7(d)(1). Within 30 days of a state's submission, EPA must approve or disapprove the state's TMDL. If EPA disapproves the state's TMDL, it must establish the TMDL within 30 days from the date of disapproval. EPA may also establish TMDLs in certain circumstances where the State has not previously submitted a TMDL for review. EPA regulations provide that the Regional Administrator must promptly issue a public notice seeking comment on EPA's TMDL. After considering public comment and making appropriate revisions, the Region is required to transmit the TMDL to the state. *See* 40 CFR 130.7(d)(2).

In the past, EPA Region 5 has issued public notices through publication in the Federal Register. In light of EPA's quest for improvements in efficiency, EPA Region 5 intends to notify the public of listing and TMDL actions under 40 CFR 130.7(d)(2) by placing notices directly on the Regional Internet Page rather than by publication in the Federal Register. The Region believes that placing the notices on the 303(d)/TMDL Program Webpage (<http://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>) provides a more effective, and efficient of providing notice. The Region also plans to issue notifications to the affected states so that these states can include links to the notices on their state websites. The letters and accompanying documents transmitting final lists and/or federal TMDLs to the state will also be accessible from the 303(d)/TMDL Program Webpage.

To the extent that this announcement may be considered a rule, EPA considers it to be a procedural rule, which is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553(b)(3)(A).

**Authority:** 33 U.S.C. 1313(d); 40 CFR 130.7.

Dated: March 25, 2016.

Tinka G. Hyde,

Director, Water Division, EPA Region 5

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